IN THE HIGH COURT OF ANDHRA PRADESH
AT HYDERABAD

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W.P.No.7498 of 2001

Dt.22-08-2007

Between:
M/s.Greaves Ltd., A.C.Guards,
Hyderabad, Rep.by its Branch Manager.

..Petitioner

and

1. M/s. G.S.Oils Ltd., solvent Extraction Plant,
   Rampur Road, Adilabad District,
   rep. by its Managing Director,
   Manoj Kumar Makaria and another.

..Respondents

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THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.7498 of 2001

Oral Order:

By means of filing this writ petition under Article 226 of the Constitution petitioner seeks writ of Prohibition prohibiting the District Consumer Forum—2nd respondent to proceed with the adjudication in C.D.No.76 of 2001 pending on its file.

Petitioner is engaged in manufacturing of engineering goods. The 1st respondent—Oil Mill placed an order for supply of Gear Box. Accordingly the petitioner supplied the same in June, 1999 under Invoice No.16833 dated 19-06-1999 worth Rs.2,75,891/-. On supply of the Gear Box the 1st respondent fitted it to the machinery by the representative of the petitioner in solvent plant. Alleging that on account of manufacturing defect the said Gear Box is not at all functioning and the production came to stand still the 1st respondent moved the District Consumer Forum, Adilabad by filing a complaint under Section 12 of the Consumer Protection Act, 1986 (for short "the Act") and contends that they telephonically informed the petitioner Unit both at Pune and its branch office at Hyderabad about the failure of Gear Box about the non-functioning of the plant and also incurring losses on account of non-production, followed by telegram dated 26-10-1999 requesting the petitioner to rectify the said defect by sending technician. Pursuant to the said telegram one Mr.K.Krishna,

representative of the petitioner unit visited the 1st respondent company and found the following:

(a) The Gear Wheel completely worn out,

(b) Back lash missing in the Gear Box

(c) Warm shoft and flat less.

and informed that the Gear Box was failed due to above reasons; the same has to be taken to the workshop of the petitioner and necessary technician will be sent for taking the same. In spite of the same, they have not replaced the same. Hence, the above complaint came to be filed for various reliefs: to refund the cost of defective Gear Box; to pay Rs.1 lakh towards compensation and to pay Rs.2,000/- towards costs of the petition.

On entertaining the above complaint and on issuance of notice the petitioner moved this Court by way of present writ petition contending that the respondent connected the Gear Box through reduction pulley of 1:2 instead of 1:1 pulley, which is not technically recommended and it is the mistake committed by the 1st respondent. The 1st respondent placed an order for another Gear Box which is running satisfactorily and they paid 50% of the cost of Rs.3,78,809/- i.e. 1,89,404 and issued cheque for the balance amount, which was dishonoured due to lack of funds. After issuing necessary notice to the 1st respondent, a compliant was lodged for the offence under Section 138 of the Negotiable Instruments Act and the same is pending. As a counter blast to the above criminal case the 1st respondent filed a compliant under Section 12 of the Act before the 2nd respondent. The petitioner contested the same stating that the 1st respondent—Mill do not fall within the definition of "*consumer*" as defined under Section

2(1)(d) of the Act and the District Consumer Forum will not have jurisdiction to deal with the above case.

Learned counsel for the petitioner contends that in view of definition "*consumer*" under Section 2(1)(d) of the Act, as the goods in question were supplied for commercial purpose, the 2nd respondent— Forum will not have jurisdiction to proceed with the case and it should be restrained from proceeding further in the matter.

Learned counsel for the 1st respondent/complaint submitted that the explanation added to Section 2(1)(d) of the Act, with effective from 18-06-1993, is claritificatory in nature and applies to all pending proceedings.

It is not in dispute that the 1st respondent placed an order for Gear Box and the same was supplied by the petitioner under Invoice dated 19-06-1999 i.e. after "*explanation"* (which came into force on 18-06-1999) is added to Section 2(1)(d).

Section 2(1)(d) and *Explanation* reads thus:

> "Consumer" means any person who,—
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> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods for re-sale or for any commercial purpose; or
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> (ii) (hires or avails of) any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any

beneficiary of such services other than the person who (hires or avails of) the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services for any commercial purpose);

Explanation:-- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment"

The Apex Court in ***LUCKNOW DEVELOPMENT AUTHORITY v. M.K.GUPTA***[1] after extracting the definition "consumer" held as under:

"It is in two parts the first deals with goods and other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complainant', 'complainant', 'consumer' but even to mention in details what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services."

The Supreme Court in ***MORGAN STANLEY MUTUAL FUND v. KARTICK DAS***[2] stated the meaning of the expression "consumer" in the following words:

> "The consumer as the terms implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer; is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the center of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer."

The Supreme Court in ***LAXMI ENGINEERING WORKS v. P.S.G. INDUSTRIAL INSTITUTE***[3] after discussing the above two judgments held as under:

> "We must, therefore, hold that (i) the explanation added by the Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance 24 of 1993) with effect from 18-06-1993 is clarificatory in nature and applies to all pending proceedings.
>
> (ii) Whether the purpose of which a person has brought goods is a "commercial purpose" within the meaning of the definition of expression "consumer" in Section 2(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case.
>
> (iii) A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self-employment is within the

definition of the expression 'consumer'."

Considering the facts of the case it was held as follows:

> "We must hold (in agreement with the National Commission), having regard to the nature and character of the machine and the material on record that it is not goods which the appellant purchased for use by himself exclusively for the purpose of earning his livelihood as explained hereinabove.

From a reading of the cause title the '*complainant*' as described in the CD is a company, it cannot be presumed that the complainant is not entitled to the benefit of approaching Consumer Forum. Whether the 1st respondent/complainant purchased the Gear Box for the purpose of earning his livelihood by means of self-employment or not is a fact, which has to be enquired by the Consumer Forum during the course of enquiry by leading evidence, but the same cannot be gone into in a summary manner under Article 226 of the Constitution. Since the matter is to be enquired into by the 2nd respondent—Forum, it cannot be prohibited to proceed with the case.

The writ petition fails and it is accordingly dismissed. However, the District Consumer Forum, Adilabad—2nd respondent is directed to dispose of C.D.No.76 of 2001 pending on its file as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of this order. All the contentions raised now are kept open to the petitioner to be raised before the District Forum in the pending CD. No costs.

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A.GOPAL REDDY,

J.

22-08-2007
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[1] (1994) 1 SCC 243

[2] (1994) 4 SCC 225

[3] (1995) II CPJ 1 (SC)